

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF KANSAS**

**Case No. 02-4116-JAR**

<sup>3</sup> *Voelkel v. Gen. Motors Corp.*, 846 F. Supp. 1482, 1483 (D. Kan. 1994).

entitle her to a second chance in the form of a motion for reconsideration.<sup>4</sup> The party seeking reconsideration bears the burden to demonstrate a change in the law, the availability of new evidence, or that reconsideration is necessary to prevent manifest injustice.<sup>5</sup> The decision to grant or deny a motion for reconsideration is committed to a court's discretion.<sup>6</sup> Plaintiff argues that the Appeals Council did not follow HALLEX I-5-3-17 which required it to request and review Plaintiff's subsequent claim which Defendant granted upon finding Plaintiff eligible for disability benefits. The Court addressed this issue in its Memorandum and Order, finding that the Appeals Council had complied with HALLEX I-5-3-17. Example 1 in HALLEX I-5-3-17 states that the Appeals Council shall look at the subsequent decision when deciding whether to grant a claimant's request for review. Part b of Example 1 states that if the Appeals Council determines "there is not new and material evidence [in the subsequent favorable decision] that relates to the period on or before the date of the ALJ decision [in the case it is reviewing], the [Appeals Council] will deny the [request for review] and not disturb the subsequent allowance." Nothing suggests that the Appeals Council did not follow the procedure required in HALLEX I-5-3-17. Plaintiff alleges that the language in the Appeals Council opinion does not indicate that it considered whether there was new and material evidence. But, the language in the Appeals Council opinion is the exact language it is directed to use, by a footnote to Part b of Example 1 in HALLEX I-5-3-17. Therefore, the Appeals Council correctly followed its own regulations, appropriately considered whether there was new and material evidence, and determined that there was not. If Plaintiff had any new and material evidence

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<sup>4</sup> *Sac and Fox Nation*, 993 F. Supp. at 1375-76.

<sup>5</sup> *Id.* at 1376.

<sup>6</sup> *Hancock v. Oklahoma City*, 857 F.2d 1394, 1395 (10th Cir. 1988).

that was not in the subsequent case file, but that related to the time period before her subsequent favorable determination, she should have submitted it to the Appeals Council at the time of their decision.

\_\_\_\_\_ Having reviewed the arguments contained in Plaintiff's Motion for Reconsideration, the Court finds no reasons for amending or altering its previous Memorandum and Order (Doc. 14). Plaintiff has failed to demonstrate that this Court misapprehended the underlying facts, or committed a manifest error of law. Additionally, Plaintiff fails to demonstrate that the evidence it relies upon in its Motion to Alter or Amend Judgment is truly newly discovered evidence. Rather, Plaintiff's motion is an obvious attempt to rehash arguments previously considered and rejected by this Court.

**IT IS THEREFORE ORDERED** that Plaintiff's Motion to Alter or Amend Judgment (Doc. 16) shall be DENIED.

**IT IS SO ORDERED**

Dated this 3<sup>rd</sup> day of May, 2004.

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S/ Julie A. Robinson

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Julie A. Robinson

United States District Court Judge